

UNITED STATES DISTRICT COURT
THE DISTRICT OF DELAWARE

In re:

INACOM CORP., et al.,

Debtors.

Chapter 11

Bankruptcy Case No. 00-2426 (PJW)

INACOM CORP., on behalf of all affiliated
debtors,

Plaintiff,

vs.

TECH DATA CORPORATION,

Defendant and
Third-Party Plaintiff,

vs.

HEWLETT PACKARD CORP.,
COMPAQ COMPUTER CORP., ITY
CORP., and CUSTOM EDGE, INC.,

Third-Party Defendants.

Adv. Pro. No. 02-03496 (PJW)

Civil Action No. 1:04-CV-00148 (GMS)

**JOINT PROPOSED FINAL PRETRIAL ORDER REGARDING TECH DATA'S THIRD-
PARTY CLAIMS AGAINST HEWLETT-PACKARD COMPANY**

This matter having come before the Court at a pretrial conference held pursuant to Rule 16 of the Federal Rules of Civil Procedure, with James F. Harker, of Herlihy, Harker & Kavanaugh, 1400 North Market Street, Suite 200, Wilmington, DE 19899, (302) 654-3111, and Charles M. Tatelbaum and Stephen C. Hunt, of Adorno & Yoss, LLP, 350 East Las Olas Boulevard, Suite 1700, Fort Lauderdale, FL 33301, (954) 763-1200, having appeared as counsel for Third-Party Plaintiff Tech Data Corporation ("Tech Data"), and Cecily Dumas, of Friedman Dumas & Springwater, LLP, One Maritime Plaza, Suite 2475, San Francisco, California 94111,

(415) 834-3800, and Derek C. Abbott, Morris, Nichols, Arsht & Tunnell, 1201 North Market Street, Wilmington, Delaware 19899-1347, (302) 658-9200, having appeared as counsel for Third-Party Defendant Hewlett-Packard Company ("HP"), as successor in interest to Compaq Computer Corp. ("Compaq") and ITY Corp. dba Custom Edge, Inc., the following actions were taken:

I. Nature of the Action

1. InaCom Corp. ("InaCom") filed an adversary proceeding against Tech Data, in the United States Bankruptcy Court for the District of Delaware, seeking to avoid allegedly preferential transfers made to Tech Data by InaCom during the 90 day period preceding the filing of its voluntary bankruptcy petition.

2. After unsuccessfully moving to dismiss the case, Tech Data filed a third-party complaint against HP alleging that HP is liable to Tech Data for any amount that Tech Data may be adjudged liable to InaCom. Tech Data's theories of liability against HP are breach of contract and indemnity.

3. Also pending before this Court in a related proceeding is a similar Third Party action against HP that was commenced by Lexmark International, Inc. ("Lexmark").

II. Jurisdiction and Venue

4. The parties agree that this Court has subject matter jurisdiction over this proceeding.

5. The parties further agree that venue is proper before this Court.

III. Stipulation of Facts

6. Attached as Schedule (a) is a statement of uncontested facts which will become a

part of this order.

IV. Contested Issues of Fact and Law

7. Attached as Schedules (b)(1) and (b)(2) are statements by each party of the contested issues of fact and law.

V. Itemized Statement of Special Damages

8. The amount of principal damages for which HP will be liable to Tech Data will be equal to the amount of damages for which Tech Data may be found to be liable to Inacom, together with pre-judgment interest, attorney's fees and costs. HP has filed a motion for the Court to hold a separate trial of the Third Party Complaints filed against it by Tech Data and Lexmark. At the conclusion of the first trial by Inacom against Tech Data and Lexmark, Tech Data, Lexmark and HP will know the amounts for which HP may be liable to Tech Data and Lexmark.

VI. Schedules of Exhibits

9. Attached as Schedules (c)(1) and (c)(2) are the parties' respective exhibit lists, including objections to each exhibit and the response to each objection. To the extent that Tech Data attaches a consolidated list of all exhibits proffered by multiple defendants to certain preference actions, including Lexmark International, Inc., Dell Computer Corp., and Ingram Entertainment, Inc., HP objects to the relevance of such exhibits. Tech Data has agreed to confer in advance of trial regarding specific exhibits proffered against HP in this third-party action.

VII. Witnesses

10. Attached as Schedules (d)(1) and (d)(2) are the parties' respective lists of the names of the potential witnesses to be called by each party, with a statement of any objections to

calling, or to the qualifications of, any witness identified on the list.

VIII. Expert Witnesses

11. Neither Tech Data nor HP will call an expert witness to testify at the trial of Tech Data's third-party complaint against HP.

IX. Deposition Designations

12. Attached as Schedules (f)(1) and (f)(2) are the parties' respective lists of depositions, or portions thereof, that may be read into evidence if the witness will not or cannot testify in person.

X. Waiver of Claims or Defenses

13. Tech Data does not waive any claims.

14. HP does not waive any of its affirmative defenses.

XI. Settlement Negotiations

15. A mediation conference was held on July 12 and 13, 2005, attended by representatives of InaCom, Lexmark, Tech Data and Ingram Entertainment Inc.

16. On or about August 9, 2005, Lexmark filed a Motion for a settlement conference before a Magistrate Judge. Tech Data has filed a Joinder with this Motion.

XII. Completion of Discovery

17. Tech Data and HP have completed discovery relating to Tech Data's Third Party Complaint against HP.

XIII. Motions In Limine

18. HP is filing separately from this Pre-Trial Order two in limine motions. Tech Data's is filing separately from this Pre-Trial Order one in limine motion.

XIV. Type and Length of Trial

19. Non Jury Trial:

- (a) This matter is presently set for trial as a non-jury trial.
- (b) The Court has previously allotted five (5) days, from October 17 through 22, 2005, for the trial of the actions brought by Inacom against Tech Data, Lexmark, Dell and Ingram, together with the Third Party Complaints filed by Tech Data and Lexmark against HP.
- (c) HP has filed a motion to bifurcate the trial of Tech Data's third party action from the trial of the Inacom preference cases. Tech Data has filed a certificate of no opposition to this motion.

(d) HP filed a similar motion to bifurcate the trial of Lexmark's third party action from the trial of the Inacom preference cases. Lexmark has not opposed this bifurcation motion.

20. Request for Jury Trial:

- (a) Tech Data has joined in a motion requesting a trial by jury. Tech Data is filing with the court, separately from this order, its jury charge and proposed trial brief.
- (b) HP has opposed Tech Data's joinder to the jury trial motion. HP does not intend to file a trial brief, jury instructions and questions for the jury unless the Court orders a jury trial.

XV. Proposed Findings of Fact and Conclusions of Law

21. Tech Data and HP will separately file with the Court their respective Proposed Findings of Fact and Conclusions of Law.

XVI. Controlling Effect of Pre-Trial Order

22. This order will control the course of the trial and may not be amended except by consent of the parties and the Court, or by order of the Court to prevent manifest injustice.

Date: _____
Honorable Gregory M. Sleet
United States District Judge

Dated: August 15, 2005

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Dated: August 15, 2005

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